IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 496 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DILIPKUMAR LAKHERAJ MAHESWARI

Appearance:

Mr.K.P. Rawal, APP for the appellant

MR KB ANANDJIWALA for Respondent No. 1

NOTICE UNSERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 06/02/2001

ORAL JUDGEMENT

1. In this appeal under Section 378 of the Code of Criminal Procedure, the State of Gujarat has challenged judgment and order dated April 22, 1991 passed by the learned Chief Judicial Magistrate, Surendranagar, in

Criminal Case No.1866 of 1987, by which, the respondents came to be acquitted for the offences punishable under Sections 7 and 16 of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The Food Inspector, Mr.P.R. Panchal, inspected the shop of the respondent No.1 on August 21, 1986 at 2 p.m. and collected sample of ground-nut oil in the quantity of 400 grams by paying price of Rs.9.60 ps. After following the usual procedure prescribed under the Act and the Prevention of Food Adulteration Rules, 1955 ('Rules' for short), the said sample was filled in three glass bottles and the said bottles were seized under a panchanama. The Food Inspector sent the said bottles to the Public Analyst, Vadodara. The report of the public analyst indicated that the said sample of ground-nut oil did not conform to the standard prescribed under the Act. After obtaining the sanction under Section 20 of the Act, the Food Inspector lodged a complaint against the respondents under Sections 7 and 16 of the Act in the Court of the learned Chief Judicial Magistrate, Surendranagar, which came to be numbered as Criminal Case No.1866 of 1987.

3. The complainant and Food Inspector, Mr.P.R. Panchal, was examined at Exh.69. After examining the complainant, charge Ex.92 came to be framed against the respondents for the offences punishable under Sections 7 and 16 of the Act. The respondents pleaded not guilty and claimed to be tried. After framing of the charge, panch, Chhaganlal Maheshwari, was examined at Exh.99. The prosecution produced voluminous documentary evidence consisting of the complaint, panchanama of collection of samples of ground-nut oil, report of the Public Analyst, order of sanction to prosecute the respondents, etc. to prove the charges against the respondents.

4. The learned Chief Judicial Magistrate, on appreciation of oral and documentary evidence, concluded that the prosecution has not proved that the sample of ground-nut oil was collected in presence of independent witness. It was further concluded by the learned Chief Judicial Magistrate that the mandatory provision of Rule 14 of the Rules was not complied with inasmuch as it was not proved that the bottles in which the sample of ground-nut oil was filled in, were clean and dry. On the basis of the abovereferred to conclusion, the learned Chief Judicial Magistrate acquitted the respondents from the charges framed against them, which has given rise to filing of this appeal by the State of Gujarat.

5. Having heard learned APP, Mr. K.P. Rawal, and having gone through the entire record and proceedings, in my opinion, the learned Chief Judicial Magistrate has not committed any error in acquitting the respondents from the charges framed against them. The evidence of the complainant, Mr.P.R. Panchal, indicated that he had not collected the sample in clean and dry bottles as prescribed under Rule 14 of the Rules. In cross examination, the complainant deposed that the sample bottles were cleaned by his helper. The prosecution had not examined the helper who had cleaned the bottles and made them dry. Unless the helper was examined, it cannot be said that the said bottles were clean and dry. [See: (i) 1980 (2) GLR p.136: M.B. Risaldar vs. Radheshyam Ramdhar; (ii) 1999 (3) GLR p.2220: State of Gujarat vs. Bhagchand Sadhumal & Another] In view of the above settled legal principles, in my opinion, since there was breach of mandatory provision of Rule 14 of the Rules, because of the sampling procedure was not properly followed, the prosecution case is liable to fail.

11. As a result of foregoing discussion, the appeal fails and is dismissed. The order of acquittal dated judgment and order dated April 22, 1991 passed by the learned Chief Judicial Magistrate, Surendranagar, in Criminal Case No.1866 of 1987 is confirmed.

February 6, 2001 (M.H.Kadri, J.)
(swamy)